

Dori Australia – Grower's Agreement - Schedule

1.	Date	
2.	Agent	<p>Dori Australia Pty Ltd ACN: 633 529 576 ABN: 876 335 295 76 Address: 95 Lord Road Bunbartha, Vic 3634 Contact person: Jamie Craig Contact email: jamie@doriaustralia.om.au Contact phone: 0429 801 802</p>
3.	Grower	<p>Name: ACN (if applicable): ABN (if applicable): Address: Email: Phone:</p>
4	Date for payment	No later than 31 December in the year that fruit is provided to the Agent for Sale
5	Insurance risks covered (see clause 14)	Dori Australia holds insurance in respect to legal liability (subject to the terms of that policy including in respect to excluded liability). It does not hold insurance in respect to any fruit held by it on behalf of growers. It does not for example hold insurance in regard to fire, theft or other loss or damage to the fruit. Accordingly the Grower is strongly advised to carry its own insurance in regard to possible loss of or damage to fruit.
6	Quality Requirements or Specifications. (these may vary from year to year, and updated specifications will be provided prior to each season if changes occur)	<p>Horticulture Produce delivered by the Grower must meet HACCP standards for Horticulture Produce delivered by the Grower. The Horticulture Produce Delivered by the Grower must meet the required MRL, Brix, Dry Matter and pressure tests. Sample testing is used by the Agent to test the Growers fruit quality. Where the sample test is not representative of the total Horticulture Produce received from the Grower the Agent shall not be held liable for the deterioration of the Growers fruit while it is in the Agents control.</p> <p>The Grower shall inform the Agent if the Growers farm or the Growers Horticulture Produce has or has had within the agreed term any reportable disease or pests.</p>

7	Fees and charges	<p>The following fees and charges will apply where relevant services are provided in regard to the fruit provided. These fees and charges may be updated and provided to the Grower prior to harvest of fruit in a new season.</p> <table border="1"> <thead> <tr> <th>Item or service</th> <th>Fee or charge</th> </tr> </thead> <tbody> <tr> <td>Commission & Royalties</td> <td>12% of sale proceeds of fruit.</td> </tr> <tr> <td>Packing charges</td> <td>The amount charged to Dori Australia by third parties.</td> </tr> <tr> <td>Storage charges</td> <td>The amount charged to Dori Australia by third parties.</td> </tr> <tr> <td>Transport</td> <td>. The amount charged to Dori Australia by third parties</td> </tr> <tr> <td>Legal costs of pursuing bad debts</td> <td>The amount charged to Dori Australia for such costs by third parties such as lawyers or court fees.</td> </tr> <tr> <td>Ripening</td> <td>The amount charged to Dori Australia by third parties.</td> </tr> <tr> <td>Other costs eg Repacking or recall costs</td> <td>The amount charged to Dori Australia by third parties.</td> </tr> </tbody> </table>	Item or service	Fee or charge	Commission & Royalties	12% of sale proceeds of fruit.	Packing charges	The amount charged to Dori Australia by third parties.	Storage charges	The amount charged to Dori Australia by third parties.	Transport	. The amount charged to Dori Australia by third parties	Legal costs of pursuing bad debts	The amount charged to Dori Australia for such costs by third parties such as lawyers or court fees.	Ripening	The amount charged to Dori Australia by third parties.	Other costs eg Repacking or recall costs	The amount charged to Dori Australia by third parties.
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Grower's Agreement

IT IS AGREED AS FOLLOWS:

1. Definitions

1.1 In this Agreement, unless the context otherwise requires:

"**Agent**" means a person who sells Horticulture Produce on behalf of a Grower to a person for a commission or fee and for the purposes of this agreement is Dori Australia Pty Ltd (ACN 633 529 576).

"**Agreement**" means this agreement.

"**Bad Debt**" means a bad debt of the Grower and is an amount owed by a person where:

- (a) the Agent arranges for the person to buy the Horticulture Produce of the Grower, and
- (b) the person does not pay the Agent for some or all of the Produce by the time that payment is required for the Produce.

"**Business Day**" means a day on which the trading banks are open for general business in Melbourne.

"**Code**" means the Horticulture Code of Conduct prescribed by the Competition and Consumer (Industry Codes–Horticulture) Regulations 2017, as amended from time to time.

"**Commercial Fruit Production Agreement**" means the Commercial Fruit Production Agreement previously entered into between the Agent and the Grower, sometimes referred to as between the Agent and Grower as the "License".

"**Grower**" means a person who grows Horticulture Produce for sale and for the purposes of this agreement is the party listed in item 3 of the Schedule of this Agreement.

"**Horticulture Produce**" means unprocessed fruit, unprocessed vegetables (including mushrooms and other edible fungi), unprocessed nuts, unprocessed herbs, other unprocessed edible plants, but does not include Nursery Products.

"**Nursery Products**" include: trees, shrubs, plants, seeds, bulbs, corns and tubers (other than edible tubers); propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers or foliage; and cut flowers or foliage.

"**Pooled Horticulture Produce**" means produce pooled in accordance with clause 23 of the Code and clause 12 of this Agreement.

"**Reporting Period**" means the date which is 30 days after the pool has been completed and reconciled for the Variety.

"**Schedule**" means the schedule attached to the front of this Agreement.

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"**Statement Period**" means the 40 Business Days following the end of the Reporting Period.

"**Term**" means the period between the Agent and the Grower entering into this Agreement and the expiration or termination of the Commercial Fruit Production Agreement.

"**Variety**" means Gold Kiwifruit variety AC1536.

2. Interpretation

In this agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular
- (b) the word "includes" in any form is not a word of limitation
- (c) a reference to "\$" or dollars is a reference to Australian dollars
- (d) a reference to any legislation or legislative provision includes a statutory modification, substitution or re-enactment of that legislation or legislative provision
- (e) if any word or phrase is given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.

3. General

- (a) The Parties acknowledge that pursuant to the Commercial Fruit Production Agreement between the Parties, the Agent has granted to the Grower a license to propagate a kiwi fruit variety known as AC1536. This Agreement shall be complementary to, and shall not replace the Commercial Fruit Production Agreement.
- (b) Pursuant to the Commercial Fruit Production Agreement and the terms of this Agreement, for the Term of this Agreement, the Grower agrees to deliver, and the Agent agrees to arrange, on behalf of the Grower, the sale of Horticulture Produce of the Variety, in exchange for the payments referred to in clause 6 of this Agreement.
- (c) For the sake of certainty, for the purposes of the Code, the Agent is acting as an Agent and not a merchant in providing its services pursuant to this Agreement.
- (d) The Agent and Grower acknowledge that they will comply with their obligation under the Code to deal in good faith at all times.

4. Term

This agreement will commence upon the date on which the Agent and the Grower enter into this Agreement and will continue for the Term unless it is terminated earlier in accordance with clause 16.

5. Agent's reporting obligations

- 5.1 For each Reporting Period, the Agent will give the Grower a statement for the Reporting Period, specifying for the Grower's Horticulture Produce received by the Agent during the Reporting Period:

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- (a) the date on which the Horticulture Produce was delivered to the Agent;
- (b) the date or dates of the sale of the Horticulture Produce by the Agent;
- (c) the type and quantity of the Horticulture Produce sold;
- (d) the price received for the Horticulture Produce sold;
- (e) details of each amount deducted by the Agent from the sale price of the Horticulture Produce; and
- (f) details of any amounts of the Horticulture Produce not sold by the Agent during that period, including:
 - (i) the reasons why the Horticulture Produce was not sold;
 - (ii) details of any amounts of the Horticulture Produce destroyed by the Agent, and the costs incurred in destroying the Horticulture Produce; and
 - (iii) details of any amounts of the Horticulture Produce held by the Agent at the end of the period.

5.2 The Agent will give the statement referred to in subclause 5.1 to the Grower within the Statement Period.

6. Commission and fees

- 6.1 Subject to subclause 11.1, the Agent will charge the Grower the amounts set out in item 7 of the Schedule.
- 6.2 In the event that in the reasonable view of the Agent unforeseen circumstances arise which make it prudent to incur fees or charges not listed in the Schedule in order to maximise the commercial return to the Grower, then the Agent will use its best endeavours to consult with the Grower prior to incurring such costs. Such costs shall be deducted from any proceeds payable to the Grower.
- 6.3 The Grower agrees that Dori Australia may deduct any amounts payable by the Grower from any amounts payable by Dori Australia to the Grower, including from the proceeds of sale of the Grower's fruit.

7. Payment

- 7.1 Subject to clauses 11, the Agent will pay to the Grower the proceeds of a sale of the Grower's delivered Horticulture Produce, less royalties, fees, charges and extra costs calculated in accordance with subclause 6.
- 7.2 Payment under subclause 7.1 will be made no later than the date listed at item 4 of the Schedule.
- 7.3 Where the proceeds of sale have been received by the Agent earlier than the date listed at item 4 of the Schedule, then the Agent may at its discretion make payments to the Grower earlier than the date listed at item 4.

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8. Bad debts

- 8.1 Subject to clause 8.2, the Agent will pursue any bad debts owing to the Grower, provided also that the Agent is of the view, acting reasonably, that such action is commercially viable.
- 8.2 If the Agent is to incur costs, whether legal or otherwise, in pursuing bad debts it shall first consult with the Grower in regard to the proposed course of action, and the amount of costs involved. The Grower shall be liable to pay or reimburse the Agent for those costs. For the sake of certainty Dori Australia may deduct these costs from any amount payable by it to the Grower for the proceeds of the sale of fruit.
- 8.3 If the Bad Debt/s relate to Pooled Horticulture Produce, the amount the Grower is liable to repay or reimburse the Agent for the costs specified under subclause 8.2, may be reduced by the Agent to reflect the proportion of the Pooled Horticulture Produce that is attributable to the Grower.

9. Delivery of Horticulture Produce

- 9.1 The Grower will bear the costs of delivery of the Horticulture Produce to the Agent, unless agreed otherwise by the parties in writing.
- 9.2 The Grower must comply with the following requirements when delivering Horticulture Produce to the Agent:
- (a) The Grower will include with each delivery, documentation listing the quantity and type of all Horticulture Produce in the delivery;
 - (b) The Grower will deliver the Horticulture Produce in standard 300kg chep bins.
- 9.3 Where the Grower delivers Horticulture Produce to the Agent, the Grower is to deliver the Horticulture Produce to 296 Graphite Road, Manjimup WA 6258 or as otherwise instructed in writing by the Agent from time to time.
- 9.4 For the purposes of this Agreement, delivery of Horticulture Produce occurs when the Horticulture Produce arrives at the address specified in accordance with subclause 9.3.

10. Type of Horticulture Produce

- 10.1 The Grower will only deliver the following types of Horticulture Produce to the Agent in accordance with the terms of this agreement:
- (a) the Variety, to any quality requirements and specifications set out in the Schedule; or
 - (b) as requested in writing by the Agent from time to time.

11. Rejection of Horticulture Produce

- 11.1 The Agent may reject Horticulture Produce delivered by the Grower in the following circumstances:
- (a) If the Horticulture Produce delivered is not the type stipulated in clause 10 of this Agreement; or

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- (b) If the Grower does not have title in the Horticulture Produce delivered by it.
- 11.2 Where the Agent rejects Horticulture Produce under subclause 11.1, the Agent will within 24 hours after the time at which the Produce is rejected, notify the Grower of the rejection by telephone, fax, email or other electronic means.
- 11.3 The Agent will notify the Grower in writing of the rejection under subclause 11.2 and the reasons for the rejection within 48 hours or such longer time that is practicable of the Grower delivering the Horticulture Produce to the Agent.
- 11.4 Where Horticulture Produce is rejected by the Agent, the Agent may in its absolute discretion:
 - (a) return the Horticulture Produce to the Grower; or
 - (b) hold the Horticulture Produce at any premises for collection by the Grower at an agreed time; or
 - (c) destroy the Horticulture Produce.
- 11.5 The Grower will be liable for all costs, expenses or loss incurred by the Agent for storing, returning or destroying any Horticulture Produce that is rejected under clause 11.4.

12. Pooling of produce

- 12.1 The Agent may pool Horticulture Produce delivered by the Grower under this Agreement with other produce to create Pooled Horticulture Produce if:
 - (a) the other produce is of the same quality as the Horticulture Produce delivered by the Grower, and
 - (b) the Grower's Horticulture Produce and the other produce meet the quality requirements, advised by the Agent to the Grower prior to Delivery.
- 12.2 Where the Agent pools Horticulture Produce in accordance with this clause, the amount payable to the Grower will be a proportion of the total proceeds received by the Agent for the pooled Horticulture Produce that is equal to the proportion of the pooled Horticulture Produce that was contributed by the Grower, less any commission, fees or extra costs specified in clause 6.
- 12.3 The Agent may operate more than one pool of Horticulture Produce (for example and without limitation one pool for Western Australia and one for Victoria).

13. Title

- 13.1 The Grower warrants that it has title in the Horticulture Produce that it delivers to the Agent.
- 13.2 Title in the Horticulture Produce will not pass to the Agent and remains with the Grower until the Agent sells the Horticulture Produce.

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14. Insurance

- 14.1 The Agent has some limited insurance for Horticulture Produce under the Agent's control as set out in the Schedule. The insurance is limited to legal liability of Dori Australia, and Dori Australia does not insure the Grower's fruit. Growers are accordingly strongly advised to carry their own insurance in regard to possible loss of or damage to their fruit.
- 14.2 The details of the insurance policy are as set out in the policy document, a copy of which is available on request:
- 14.3 The insurance policy is with Woodina underwriting.
- 14.4 The maximum amount of insurance cover provided by the policy in respect of claims that may be made in relation to the Horticulture Produce is 10 million dollars for general legal liability, and \$250,000 for fruit in physical control.
- 14.5 The policy covers the risks set out in the Schedule.

15. Dispute resolution

- 15.1 In the event that there is a dispute with the Agent under this Agreement or the Code, the Grower should contact the Agent's Contact as listed in the Schedule.
- 15.2 In the event that there is a dispute with the Grower under this agreement or the Code, the Agent should contact the Grower's Contact as listed in the Schedule.
- 15.3 The parties agree that if a dispute arises between them in relation to any matter covered by this agreement, they will follow the dispute resolution procedure set out in Part 5 of the Code.

16. Termination

- 16.1 Despite anything else in this agreement, either party may terminate this agreement at any time within the cooling-off period being 14 days after the day on which this agreement was entered into.
- 16.2 A party may also terminate this Agreement if:
- (a) The other party is in serious and/or persistent breach of this Agreement; or
 - (b) The Commercial Fruit Production Agreement is terminated for any reason.
- 16.3 Where this agreement is terminated pursuant to subclauses 16.1 or 16.2 any trade that has occurred under the agreement before the termination is governed by the terms of this agreement.
- 16.4 Subject to subclause 16.4, a party to this agreement who receives a payment (of money or other valuable consideration) for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement, must return the payment to the party who made the payment within 14 days after the day on which the agreement is terminated.

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- 16.5 A party required to return a payment under subclause 16.4 may deduct, from the amount to be returned, reasonable expenses incurred under the agreement for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement.

17. Commercial Fruit Production Agreement

- 17.1 For the avoidance of doubt, any rights or obligations under this Agreement are additional to the parties' rights and obligations under the Commercial Fruit Production Agreement and the Code.
- 17.2 To the extent of any inconsistency between this Agreement, the Commercial Fruit Production Agreement and/or the Code, the inconsistency shall be resolved according to the following order of precedence:
- (a) the Code;
 - (b) the Commercial Fruit Production Agreement;
 - (c) this Agreement.

18. Variation

This agreement may only be varied by further agreement in writing between the Agent and the Grower and be accepted by the parties to it either by signature by both parties or a written notice of offer and a written notice of acceptance.

19. Counterparts

This agreement may be executed in counterparts.

20. Consents

Where this Agreement contemplates that a party may agree or consent to something (however it is described), the party may:

20.1 agree or consent, or not agree or consent, in its absolute discretion; and

20.2 agree or consent subject to conditions,

but must do so reasonably, unless this agreement expressly contemplates otherwise.

21. Liability of Expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

22. Electronic Signature

- 22.1 In this clause "electronic signature" means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this agreement by electronic or mechanical means, and "electronically signed" has a corresponding meaning.

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- 22.2 The parties consent to this agreement being signed by or on behalf of a party by an electronic signature.
- 22.3 Where this agreement is electronically signed by or on behalf of a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by the electronic signature.
- 22.4 This agreement may be electronically signed in any number of counterparts which together will constitute the one document.
- 22.5 Each party consents to the exchange of counterparts of this agreement by delivery by email or such other electronic means as may be agreed in writing.
- 22.6 Each party must upon request promptly deliver a physical counterpart of this agreement with the handwritten signature or signatures of the party and all written evidence of the authority of a person signing on their behalf, but a failure to comply with the request does not affect the validity of this agreement.

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Executed as an Agreement

EXECUTED by **Dori Australia Pty Ltd ACN 633 529**)
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Secretary/Director

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Director

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Name (please print)

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Name (please print)

EXECUTED by **Grower:**)
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Signature

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Signature

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Name (please print)

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Name (please print)